

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
SEP 22 2009
Clerk, U.S. District and
Bankruptcy Courts

JUDICIAL WATCH, INC.,)
501 School Street, S.W., Suite 700)
Washington, DC 20024,)

Plaintiff,)

Civil Action No.

v.)

Case: 1:09-cv-01799

U.S. DEPARTMENT OF HOMELAND)
SECURITY,)
601 South 12th Street)
Arlington, VA 22202,)

Assigned To : Kollar-Kotelly, Colleen

Assign. Date : 9/22/2009

Description: FOIA/Privacy Act

Defendant.)

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Judicial Watch, Inc., brings this action against Defendant U.S. Department of Homeland Security ("DHS") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 501 School Street, S.W., Suite 700, Washington, DC 20024. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its public interest

mission, Plaintiff regularly requests access to the public records of federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the United States Government and is headquartered at 601 South 12th Street, Arlington, VA 22202. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On July 20, 2009, Plaintiff sent a FOIA request to Department of Homeland Security ("DHS"), seeking access to the following records:

- a. The new standardized Memorandum of Agreement used to enter into 287(g) partnerships, as announced by Secretary Napolitano on July 10, 2009;
- b. All new 287(g) agreements entered into with law enforcement agencies;
- c. All documents concerning the decision to standardize the Memorandum of Agreement and/or create new 287(g) agreements;
- d. The Media Relations Plans concerning 287(g) agreements;
- e. Congressional Notification Plans concerning 287(g) agreements;
- f. Any documents containing information on the development of the Memorandum of Agreement;
- g. All email communications concerning the new 287(g) Memorandum of Agreement, including but not limited to communications between the following government officials:
 - Department of Homeland Security Secretary Janet Napolitano
 - Border Security "Czar" Alan Bersin
 - Department of Homeland Security Chief of Staff for Policy, Noah Kroloff
 - Department of Homeland Security Spokesman Sean Smith
 - Deputy Assistant Secretary for Policy Esther Olavarria
 - Assistant Secretary for Immigration and Customs Enforcement John Morton
 - Immigration and Customs Enforcement Chief of Staff Suzie Barr
 - White House Director of Intergovernmental Affairs Cecilia Munoz

The time frame for this request is June 1, 2009 to present.

6. By letter dated July 30, 2009, DHS acknowledged receipt of Plaintiff's FOIA request on July 20, 2009.

7. Pursuant to 5 U.S.C. § 552 (a)(6)(A)(i), DHS was required to respond to Plaintiff's request within twenty (20) working days of receipt of the request. In its acknowledgment letter, however, DHS asserted that it was granting itself an additional ten (10) working days to respond to the request pursuant to the provisions of 5 U.S.C. § 552(a)(6)(B)(i).

8. Even taking into consideration the additional time DHS granted itself to respond to Plaintiff's request, DHS' response was due by August 31, 2009, at the latest. However, as of September 21, 2009, DHS has failed to produce any records responsive to Plaintiff's request or demonstrate that responsive records are exempt from production. Nor has it indicated when or whether any responsive records will be produced.

9. Because DHS failed to comply with the time limits set forth in 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(a)(6)(B)(i), Plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA)

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant has violated FOIA by failing to respond to Plaintiff's July 20, 2009 request.

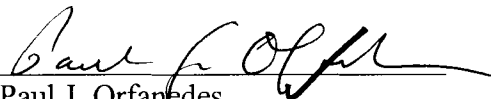
12. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the requirements of FOIA.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's July 20, 2009 request and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.


Dated: September 22, 2009

Respectfully submitted,

JUDICIAL WATCH, INC.



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